

**EXHIBIT C**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: Chapter 11  
THE HERTZ CORPORATION, *et al.*, Case No. 20-11218 (MFW)  
Courtroom No. 3  
824 North Market Street  
Wilmington, Delaware 19801  
Debtors. December 28, 2020  
3:00 P.M.

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES (via Zoom):

For the Debtors: Brett Haywood, Esquire  
RICHARDS, LAYTON & FINGER, P.A.  
920 N. King Street  
Wilmington, Delaware 19801

- and -

Ron Gorsich, Esquire  
WHITE & CASE  
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Los Angeles, California 90071

- and -

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1 we would file the fee application well in advance of Moelis  
2 earning any fee and until we have the SAPA in place we are  
3 not certain that a sale is going to go through. It simply  
4 would have been inexcusable to risk harm to the estate before  
5 we knew a sale was going to happen and before any  
6 compensation would have been earned in any event.

7           Moreover, as the court has seen, Moelis's  
8 compensation agreement would have revealed far too much about  
9 the target price for the sale and could not be revealed early  
10 in the process. Any supplemental application filed before  
11 the SAPA is in place would reveal too much, even if filed  
12 under seal.

13           Thank you, Your Honor. Unless you have any  
14 questions, we will rest.

15           THE COURT: No, thank you.

16           Anybody else?

17           MS. RICHENDERFER: Your Honor, if I may.

18           THE COURT: Yes.

19           MS. RICHENDERFER: Linda Richenderfer on behalf of  
20 the U.S. Trustee. I just wanted to respond to a couple of  
21 points there.

22           Regarding the idea of there being an expansion,  
23 Mr. Gorsich mentioned. Your Honor, many of the professionals  
24 that the debtors have retained in this case have such  
25 provisions in their forms of order and in their engagements.

1 And there have been several times where FTI has come back to  
2 the court and expanded the scope of its retention.  
3 (Indiscernible), as I just eluded to or referenced to the  
4 court.

5           The U.S. Trustee hasn't objected to those. We're  
6 not objecting because there was a provision that said they  
7 could expand the scope and somebody went and did so. We're  
8 objecting to the fact that when parties find it necessary to  
9 do so the assumption is that they are going to comply with  
10 the bankruptcy code, bankruptcy law, bankruptcy rules and  
11 that we're going to see a timely motion to cover the expanded  
12 services and the expanded fee. That is the problem here. We  
13 didn't see that motion.

14           We're not saying nothing can ever be done *nunc pro*  
15 *tunc*. I don't think I have objected -- I know I haven't'  
16 objected to anything else in this case seeking *nunc pro tunc*  
17 relief for the professionals that have been retained, but  
18 when its four months that is an entirely different scenario.

19           I think, to borrow something Mr. Gorsich said, we  
20 have to look at the totality of the circumstances here and  
21 the manner in which these facts unfolded, and the four months  
22 that went by before we saw, and before the court was asked to  
23 approve this expanded retention for this particular  
24 professional.

25           Thank you, Your Honor.

1 THE COURT: All right. Thank you.

2 Well let me make my ruling on this. I am going to  
3 overrule the United States Trustees objection for a couple of  
4 reasons. First, this is not a case of retaining a  
5 professional without any court approval of that professional  
6 in the case. Moelis already has been retained in this case  
7 on a finding by this court that they are competent and  
8 disinterested.

9 With that said I will note that at this point  
10 there is no evidence that they are disinterested -- that they  
11 are not disinterested, but apparently the U.S. Trustee has  
12 some additional issues and questions given that the stalking  
13 horse bidder is related to Apollo and there was disclosure  
14 that Moelis had some connection with Apollo.

15 But I need not deny the retention application at  
16 this point on that point because to the extent it is  
17 disclosed or does appear that they are disinterested I am  
18 sure the United States Trustee will bring that to my  
19 attention. And since they are not being paid anything for  
20 their work at this time until a sale occurs there is plenty  
21 of time for the United States Trustee to explore that.  
22 Again, on the record before me Moelis is disinterested and  
23 can be retained for this work.

24 With respect to the issue of whether or not the  
25 original retention covered this exact work I think it is

1 clear both from the language in the original retention  
2 engagement letter and the testimony presented by both the  
3 debtor and by Moelis in the form of their declarations, it  
4 was clear that a sale of less than the majority or all of the  
5 debtor was not contemplated as part of the original  
6 engagement letter. And the Donlen assets be not a  
7 significant or certainly not the majority or all of the value  
8 of the debtor fits outside of that original retention.

9           The original retention engagement letter,  
10 application, and this court's order all contemplated the  
11 right of the debtor and Moelis to seek to expand the services  
12 for which Moelis was retained, and as the U.S. Trustee noted,  
13 other professional's retentions add similar terms and other  
14 professionals have extended their services contingent upon  
15 the filing of a supplemental retention application and  
16 approval of the court. So, the filing of the supplemental  
17 retention application was not barred by the original  
18 retention and certainly this anticipated the filing.

19           I also find that *nunc pro tunc* approval of the  
20 retention for this specific part of the engagement, that is  
21 work on the sale of the Donlen assets can be granted because  
22 it does meet the extraordinary circumstances of the Arkansas  
23 case. This is not simply a case where the professional  
24 forgot to get retained, where a professional relied on others  
25 to file the application and they delayed or forgot to file

1 the retention application.

2           This was done purposely and the court finds that  
3 it was a reasonable exercise of the debtor's business  
4 judgement in doing so in order to protect and maximize the  
5 value of the Donlen business. I accept the testimony and the  
6 direct testimony, the live testimony, as well as the  
7 declarations that support that given the adverse effect that  
8 the debtors bankruptcy has had on the Donlen business. I  
9 disagree with the U.S. Trustees characterization of that. I  
10 think it was direct evidence of that fact and I accept it. I  
11 find it convincing.

12           Further, there is no prejudice to anybody. No fee  
13 for this engagement will be earned until a sale process is  
14 successfully concluded and the sale order entered. And,  
15 again, I think it was reasonable for the debtor not to file a  
16 retention application until the debtor had some reasonable  
17 expectation or assurance that the exploration of a sale of  
18 the Donlen business would be fruitful. It would have been,  
19 in my opinion, perhaps a breach of the debtor's fiduciary  
20 duty to have filed something suggesting that there might be a  
21 sale only to have it not come to fruition. That would have  
22 caused a further erosion of the business of Donlen as a value  
23 of that business.

24           So, I accept the debtors' decision to wait until  
25 there was some assurance that a sale might proceed

1 successfully before filing any application to retain Moelis.  
2 Again, I think this is not the circumstance where Moelis is a  
3 stranger to this case. They have already been retained in  
4 the case. They have already been found to be competent to  
5 serve as the debtor's investment banker. They have already  
6 been found to be disinterested. So, I think that on the  
7 record made there is strong support for granting the request  
8 of the debtor.

9           Let me point out, I think Acevedo is clearly  
10 distinguishable not only in this case, but in many bankruptcy  
11 cases. There are many instances in bankruptcy where not only  
12 Rule 6003, but many instances where because of the notice  
13 requirements the court is unable to enter an order on no  
14 notice and will allow any relief to be *nunc pro tunc* to the  
15 filing of the retention application.

16           It is not creating jurisdiction in this court.  
17 This court has jurisdiction over the retention of  
18 professionals. And, again, I think the circumstances of when  
19 the debtor decided to actually file the retention application  
20 met the requirements of the Third Circuit extraordinary  
21 circumstances in Arkansas.

22           So, I will overrule the objection and will grant  
23 the application, again, subject to any issue that may come up  
24 in the event that the U.S. Trustee believes that Moelis is  
25 not disinterested on this point.



1 I also want to thank the committee for having done  
2 their job in reviewing the retention application. I suspect  
3 it was on all aspects, not simply on whether the fee itself  
4 was appropriate.

5 So I will look for a form of order, Mr. Zakia or  
6 Mr. Gorsich. Have you uploaded an order on that retention  
7 application?

8 MR. HAYWOOD: Your Honor, for the record this is  
9 Brett Haywood of Richards Layton.

10 We have uploaded that order on that retention.  
11 And if I may ask, Your Honor, I believe the committee wishes  
12 to raise something with you if you wouldn't mind spending a  
13 few other minutes with us.

14 THE COURT: Sure.

15 MS. HOOVER: Good afternoon, Your Honor. This is  
16 Jennifer Hoover of Benesch for the record. Can you hear me?

17 THE COURT: I can.

18 MS. HOOVER: Thank you.

19 Briefly, Your Honor, the committee would like to  
20 address the court on some discreet matters regarding upcoming  
21 scheduling and Hertz. We have discussed this briefly with  
22 both debtor's counsel as well as Ms. Richenderfer. If you  
23 would allow the committee to proceed briefly Jonathan Wagner  
24 of Kramer Levin would like to address the court. I would note  
25 his *pro hac vice* was filed this morning and was entered this

1 afternoon during the course of the hearing.

2 THE COURT: All right.

3 MR. WAGNER: Your Honor, this is Jonathan Wagner.  
4 Can you hear me?

5 THE COURT: I can.

6 MR. WAGNER: Okay. Thank you for considering this  
7 matter. Given the holidays and the holiday schedule the  
8 committee thought it was prudent to raise with Your Honor  
9 today an issue concerning the scheduling of the bifurcation  
10 motion that was filed late on December 23rd for a hearing on  
11 January 13th. For reasons I don't need to get into now the  
12 January 13th hearing will not work. It is not conducive to a  
13 fair and efficient hearing of this important matter.

14 We have raised this issue with counsel to the  
15 debtors and other interested parties and we have all agreed  
16 that rather than address the scheduling issue today we would  
17 try in short order to work out a schedule. But given the  
18 time exigencies, and the holiday, and holiday schedules for  
19 the rest of the week what we would like to do is if we can't  
20 work out a schedule, let's say, by early tomorrow we would  
21 like to get a date now at Your Honor's earliest conveyance  
22 either later tomorrow or perhaps on Wednesday so that we can  
23 address the scheduling issue.

24 I am hopeful that we will be able to work out the  
25 scheduling, but just in case I think it would be prudent to

1 get a date with Your Honor either late tomorrow or on  
2 Wednesday. You should always take lawyers time predictions  
3 with a grain of salt, but I don't think it would take more  
4 than fifteen minutes of Your Honor's time in the event we  
5 can't reach an agreement.

6 THE COURT: Let me check with Ms. Capp.

7 (Pause in record)

8 THE COURT: Well why don't I do this; I can hear  
9 you tomorrow at four o'clock. Does that work for the  
10 parties?

11 MR. WAGNER: That works for the committee, Your  
12 Honor.

13 MR. ZAKIA: Your Honor, this is Jason Zakia for  
14 the debtors. Yes, that's fine.

15 As counsel just mentioned they did raise with us  
16 their issues concerning scheduling. We are going to work  
17 with them over night and hopefully we will be able to resolve  
18 everybody's concerns. I can't promise at this point we will  
19 get to an agreement, but we will try our best. If not, we  
20 will see the court tomorrow at four o'clock.

21 THE COURT: All right. Do we want to do it by  
22 Zoom or do you just want to do a CourtCall conference,  
23 teleconference.

24 MR. WAGNER: From the point of view of the  
25 committee a CourtCall conference is fine.

1 MR. ZAKIA: Debtors would agree with that, Your  
2 Honor.

3 THE COURT: All right. We will do it by CourtCall  
4 then.

5 MR. WAGNER: Thank you, Your Honor.

6 THE COURT: All right. I hope you work it out.

7 MR. WAGNER: Thank you.

8 THE COURT: We stand adjourned. We're done today?

9 MR. ZAKIA: That's right, Your Honor. Thank you  
10 for your time.

11 THE COURT: Thank you.

12 (A Chorus of "Thank you, Your Honor")

13 (Proceedings conclude at 4:36 p.m.)

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16

17 CERTIFICATE

18

19 I certify that the foregoing is a correct transcript  
20 from the electronic sound recording of the proceedings in the  
21 above-entitled matter.

22

23 /s/Mary Zajackowski  
Mary Zajackowski, CET\*\*D-531

December 29, 2020

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